

MHAU050047692025



ORDER BELOW EXH.18 IN Spl. C. S NO. 35 / 2025

(Sagar Sancheti Vs. Ajay Sancheti and others)

The plaintiffs have filed this second application for grant of temporary injunction against the defendant No.6 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (For short 'the Code').

2] Heard Ld. Advocate Shri.N.R.Haridas for the plaintiff and Shri.D.B.Warpe for the defendant No.6. Perused application and say and documents filed by parties.

3] The plaintiff contended that, the defendant No.1 without legal necessity mortgaged the suit property twice on 13.12.2016 for securing of loan of Rs.75,00,000/- and 2.50 Crore with defendant Nos.6 and 7 respectively. This mortgaged deed was executed without his consent. Thereafter, the loan accounts have become N.P.A. and bank started recovery proceeding. The plaintiff has undivided share in the suit property. He is not either borrower or guarantor. He is not party to the mortgage so he may be protected by this court since his undivided share is involved in the suit property. The defendant No.6 have issued notice to take possession of suit property on 18.03.2026. So, they may kindly be restrained by order of temporary injunction.

4] The plaintiff has impleaded defendant Nos.6 and 7 after obtaining the relief of temporary injunction against defendant Nos.1 to 3 from this court. The defendant No. 6 has filed "say" to the application of temporary

injunction at **Exh.19**. As per the contentions of defendant No.6 the suit is collusive and barred by Section 34 of SARFASI Act. The defendant No.6 is securing his interest after initiating recovery proceeding and the order of debt recovery tribunal. Now, it has started process of taking possession on 18.03.2026. The defendant No.3 has given the property under mortgage after legal process. Before registration of mortgage due search of property was under taken by the bank through Advocate Shri. P. P. Kale and satisfaction of debt section of the bank. After paying some installments the defendant No.3 became the defaulter and neglected to pay loan amount. The bank has issued notice of recovery. Thereafter, the defendant No.3 has issued some cheques for payment of installments and they all are also dishonoured. During the recovery proceeding, defendant No.3 has transferred the suit property by gift to her son defendant No.2. The bank has taken serious cognizance to the fraud exercised by defendant No.3 and so lodged complaint in the Vaijapur Police Station. The police has not registered the F.I.R.. The money under recovery is public money either deposited or invested by the people in general. If the stay is granted to recovery proceeding, defendant No.6 will suffer irreparable loss. Hence, application may be rejected.

5] The points for determination along with my findings thereon with reasons are as follows:-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether plaintiffs proves prima-facie case in their favour ?	No.
2)	Whether balance of convenience lies in favour of plaintiffs ?	No.
3)	Whether plaintiffs will suffer irreparable loss, if application is rejected ?	No.
4)	What order ?	As per final order.

REASONS

As to Point Nos.1 to 3 :

6] Point Nos.1 to 3 are inter related with each other. The discussion on all the points is on same footing.

7] This is the classic case of clever drafting and pre-planning to have good foundation of a case before asking actual relief from the Court. The plaintiff who is urged now as a chartered accountant, initially represented as a seller of Saree in the shop namely Sancheti Sarees at Tilak Road, Vaijapur. Now, the plaintiff is shown as chartered accountant and relocated at Dubai. It gives ambiguity and hypocrisy towards understanding the case. Inference can be drawn that, at the relevant time he was not running the business of Sarees and having occupation in the building as well as residence in the house. Why he is purportedly shifted to the Dubai when presently there is running war between Iran and America and it is prevalent, predominant and every Indian citizens is eager to reach mother-land. His representation through G.P.A. Shri. Dandage is unbelievable.

8] This court has granted temporary injunction when the plaintiff was in danger of dispossession and transfer of interest from suit property to the defendant No.5. The defendant No.5 is shown as Shaikh Nawaj S/o Majid Shaikh in the suit nomenclature. He was purportedly shown as intruder to the property so this court has granted relief of temporary injunction to the plaintiff against defendant No.5. At that time the dispute was between the family of plaintiff only. However, till today, the defendant No.5 is not appeared in the court and the plaintiff sought relief only in presence of defendant Nos.1 to 3.

9] The plaintiff is contending that he is not aware with the various

transactions taken place as regard to the suit property and the various mutations carried on the property card. He is acquainted with the said transactions when he saw the P.T.R. extract and filed this suit on dated 17.10.2025. The pleadings pre-amendment was formal in nature.

10] This court has held while passing earlier order of temporary injunction that the defendants have admitted the address of parties, family history, description of properties, pedigree of family property and flow-sheet chart of the suit property. The substantial pleading is admitted by the defendants. The reply appears formal one. There was no serious denial to the suit. There was only opposition to the marriage of plaintiff. When the dispute is in between the family, this court has granted temporary injunction restraining defendant Nos.1 to 3 from further alienation of suit property. However, the court was cautious while passing order and specifically directed to have effect of order of temporary injunction in between the parties to the suit only and warned to the plaintiff that any other person may be take recourse of law against the suit property.

11] As per the principle of equity, plaintiff should come with clean hand and express bonafide intention to the court. He must show, clear case before the Court and act honestly. The relief of injunction is equity relief. The one who sought equity must do equity. The plaintiff is not a lay man. He is urged as chartered accountant by profession. He is well acquainted with the law and property rights. His job is to fix the problems of citizens who is in trouble with Government taxes because of their rights, duties, assets and liabilities. It is surprising and not acceptable to hear that such a person is not aware with the various transactions of sale, mortgage, relinquishment of rights as to his own ancestral property. He has not expressed his true identity before the Court when he asked the relief of temporary injunction and

declaration pertaining to various transactions.

12] Even-though, when the court has observed the pleadings of parties, initially, this court was doubtful and suspicious while giving the first relief of injunction to the plaintiff. There was every possibility to misuse the order of temporary injunction under the garb of order of injunction, there was every possibility to exclude third persons from taking action against the suit property. The said threat to the order of injunction was evident in the court proceeding when defendant Nos. 6 and 7 are inducted in this litigation, particularly when the same relief is asked against new defendants.

13] By the above reasons the present suit for partition therefore appears prima-facie hide and seek game, defrauding the interest of secured creditor (defendant No.6) when it is taking action through D.R.T. The present suit is amount to pre-arranged plan seeking the relief of injunction against the family at the initial time and later on against the true defendants. There are delay of 10 years from the registration of mortgaged deeds. The bonafide plaintiff ought to have knock the door of D.R.T. instead of this court.

14] The honest and bonafide exclusioner of partition may file a suit for partition and injunction at the earliest but not at the eleventh time. The suit for partition is not barred but in the present form objectionable. The suit for partition is maintainable since the relief of partition can only be granted by civil court. The pleadings of parties from the initial stage to this stage shows the conception and common intention between the plaintiff and defendant Nos.1 to 3 to exclude the defendant No.6 from taking action against the suit property. In this case it is noted that, plaintiff contended the defendant No.1 had mortgaged the suit property but mortgaged deed shows that defendant No.3 executed mortgage in favour of defendant No.6. This pleading of

plaintiff is found against the documents.

15] Alternatively, when the defendant No.3 executed mortgage to defendant No.6, she was full owner of suit property as per Section 14 of the Hindu Succession Act, 1956. She has acquired property by pre-existing right and by registered sale deed also. After acquisition of the ownership, she has mortgaged the suit property and thereby transferred her interest in favour of defendant No.6. This transfer occurred after she was recognized as the full owner and possessor of the property by law under Section 14 of the Hindu Succession Act, 1956. This right was absolute and legal. In this context also the mortgage deed appears prima-facie appropriate and proper.

16] Ld. Counsel for the plaintiff relied on the various judgment i.e., *Bank of Baroda Vs. Gopal Shriram Panda*, Judgment of Hon'ble Bombay High Court, CRA No. 29/2011, *Tourism Finance Corporation of India Vs. Aishwarya Chetan Khedkar*, Judgment of Hon'ble Bombay High Court, WP No. 3272/2025, *Mrs. Leelamma Mathews Vs. Indian Overseas Bank and Ors*, Judgment of Hon'ble Supreme Court, Civil Appeal No.7128/2022, *Parasmal Vs. Prakashchandra*, Judgment of Hon'ble Rajasthan High Court, CFA No. 301/2023 and *Rajiv Sareen Vs. Divyanashu Enterprises and Ors*, Judgment of Hon'ble Delhi High Court. The sum and substance of above case laws shows that, the suit of partition is triable in the civil court and the court can go into legality of the mortgage. The right of inheritance is legal right and can only be determined by the civil court.

17] If we consider the title of suit property, the defendant No.3 has rightly mortgaged the suit property when she was full owner and having unrestricted rights, title and interest to the suit property. It appears that, there is no necessity to make inquiry further into the title and accordingly I answer

point Nos. 1 to 3 in the negative and in answer to point No.4, I pass the following order :-

ORDER

1. The second application for temporary injunction seeking the relief against defendant No.6 is rejected.
2. There is no change as regard to the earlier interim order passed this Court, in view of the amendment in plaint.

Place : Vaijapur.
Date : 17.03.2026.

(D. S. Pisal)
Jt. Civil Judge (S.D.,) Vaijapur.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer :- P. N. Waghamare.
Court :- Jt. CJSD, Vaijapur.
Date :- 17.03.2026.
Judgment signed by the Presiding
Officer on :- 17.03.2026.
Judgment/ order uploaded on :- 18.03.2026.